OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 08-08 May 15, 2008

To: All Divisions Heads, Regional Directors, Officers-in-Charge, and Resident Officers

From: Ronald Meisburg, General Counsel

Subject: Report on First Contract Bargaining Cases

Two years ago, I issued Memorandum GC 06-05 "First Contract Bargaining Cases" announcing my intent to pay special attention to cases involving initial contract bargaining agreements. Today, I am pleased to report on our efforts to date.

At the outset, let me make two important points about this program. First, the purpose of the First Contract Initiative is to focus our resources on a critical point in labor management relations – the beginnings of relationships freely chosen by employees in the exercise of their Section 7 rights. This initiative does not involve a new approach to how we analyze Section 8(a)(5) charges. Indeed, as I have stated on a number of occasions over the past two years, the decisions on the merits of a first contract bargaining charge have been and will continue to be based on traditional Board law as it has been articulated in Board decisions.

Second, in Memorandum GC 06-05, I reported that charges alleging that employers have refused to bargain are meritorious in more than a quarter of all newly-certified units (28%). That number was derived by using the number of initial contract unfair labor practice charges (1,154) filed from FY 2002 through FY 2005 and the number of certifications of representative issued during the same period (5,483). In retrospect, we should have utilized the number of initial contract unfair labor practice "situations" in evaluating the incidence of violations occurring during this critical period. Unfair labor practice situations are groups of charges relating to the same parties and the same disputes. Using situations rather than individual charges presents a clearer picture because several charges are often filed in the context of a single bargaining situation. From FY 2002 through FY 2005, the 1,154 individual initial contract unfair labor practice charges filed actually represented 925 situations, resulting in a 17% figure, rather than 28%.

In the two years since issuance of Memorandum GC 06-05, a number of first contract cases have been submitted to Advice for consideration of whether or not special remedies or Section 10(j) relief is warranted. Where appropriate, we have authorized special remedies in cases, including notice readings, union access to bulletin boards and periodic reports on the status of bargaining. We have also requested, and the Board has granted (as have I, pursuant to the Board's delegation), Section 10(j) authority in first contract bargaining cases.

It is too early to assess comprehensively the effect of our efforts with respect to first contract bargaining, although comments from practitioners on both sides have generally been favorable to the initiative. We do have some very preliminary statistics. For example, in Memorandum GC 06-05, I noted that during the period FY 2002 through FY 2005, almost half (49.65%) of charges alleging that employers refused to bargain with the union occurred during initial contract bargaining situations. For FY 2006 through FY 2007, this figure has dropped to 25%.

We have also seen a decline in the merit rate of first contract charges. Thus, during the base period (FY 2002-2005), the merit rate for first contract charges was 44.4%, well above the merit rate for our caseload overall (36-38%). In FY 2007, the merit rate for first contract charges was 37.2%, roughly the equivalent of the rate for all charges, 36.6% in FY 2007.

As I say, it is still too early to determine the causes of these changes in our case statistics. They may be only aberrations or they may be, in part, the effects of our reduced "R" case intake. I believe, however, that our announced commitment to address these situations has had some effect on these numbers. Indeed, in my view, your efforts, particularly our consideration of injunctive relief under Section 10(j) and our pursuit of special remedies for unfair labor practices committed during negotiations of initial contracts, have sent a clear message of our commitment to protecting freely chosen collective bargaining.

I know that there is a great deal of good faith collective bargaining in our country. Indeed, the level of voluntary compliance with the purposes and policies of the Act is a record for which the labor management community can be justifiably proud. Our initiative can add to this fine record by encouraging parties who are new to collective bargaining to approach these relationships with an openness and commitment to the process of good faith collective bargaining.

I thank you for your diligent efforts on behalf of the Agency and congratulate you on the results.

/s/
R.M.

cc: NLRBU
Release to the Public

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